IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 05 of 2005

1. State of Uttaranchal through Secretary
   Revenue Department, Uttaranchal Shasan
2. Collector, New Tehri.
3. Tehri Hydro Development Corporation through
   its Chief Managing Director
   Head Office Bhagirathi Purum
   Tehri, District- Tehri Garhwal……Appellants.

Versus

1. Smt. Noorjahan
   W/o Late Sri Abdul Gaffar
2. Sri Abdul Jabar.
3. Sri Abdul Kadir.
4. Sri Abdul Atik.
5. Sri Abdul Irshad.
6. Sri Abdul Waquar
   All sons of Late Sri Abdul Gaffar
   All R/o Muslim Mohalla, Purani Tehri
   At present R/o Borari, New Tehri.

……claimants/respondents

Learned Standing Counsel for the Appellants.
Shri I.S. Mehra, learned counsel for the respondents..

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 54 of Land Acquisition Act, 1894, is directed against the judgment and award dated 08.11.2004, passed in Land Acquisition Reference Case No. 12 of 1988, whereby the learned Additional District Judge/F.T.C., Tehri Garhwal, has enhanced the amount of compensation by Rs. 92,084/- in respect of the land and house, acquired by the claimants.

2. Brief facts of the case are that the land and house of the claimants/respondents, was acquired for construction of Tehri dam. A notification under Section 4 of Land acquisition Act, 1894, was issued and published in the Gazette on 10.03.1984, in respect of land in question. The Special Land Acquisition Officer, assessed the value of the land at Rs. 5.55 per sq. ft. and the house was valued at Rs. 46,044/-. On the objections of the claimants, a reference was made under Section 18 of aforesaid Act to the District Judge, Tehri Garhwal. The claimants have alleged that the land and the house have been valued in-sufficiently. They have claimed that the value of the house was Rs. 2,00,000/- and value of the land at the time of acquisition was Rs 30 per sq. ft.

3. Learned Reference Court, framed the following issues in the matter:-

1. *Whether the Special Land Acquisition Officer, Tehri Garhwal, has undervalued the property acquired? If so? What is the just and proper amount of compensation?*
2. *Whether Tehri Hydro Development Corporation is a necessary party?*
3. *To what relief? If any, the claimants are entitled?*
4. *Whether the reference is within time?*

4. After recording the evidence and hearing the parties, the reference court found that valuation

assessed by the Special Land Acquisition Officer is insufficient. The court further found that the reference is within time and it is not bad for non-joinder of necessary party. Aggrieved by the judgment and award of the reference Court, this appeal has been filed by the State and Tehri Hydro Development Corporation.

5. I heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellant, argued that the reference court has enhanced the amount of compensation unreasonably. It is further argued that there was no sufficient evidence to show if the value of the land was Rs. 30 per sq. ft. Perusal of the record, shows that the finding as to the market rate of the land is based not only on the Survey Commissioner's report- paper No. 67-C but also based on the admission made by the witness of the defendants/appellants. It has been observed by the learned Reference Court that D.W. 1.- Mahendra Kumar, has admitted that while submitting his report 68-C on behalf of the State, a to the market value, he has not considered the court yard, measuring area 10ft X 10ft and the area covered by the toilet and the surrounding walls. D.W. 2- R.K. Katkhal has not denied if the rates applied by him to assess the market value on behalf of the State do not relate to the year 1978, while the land and house were acquired in the year 1984. Not only

this, paper No. 50-C in the trial court judgment, shows that the Special Land Acquisition Officer has assessed value of the land at Rs. 30 per sq. ft. in respect of the another person whose land was also acquired for the construction of Tehri dam. In the circumstances, it cannot be said that the Reference Court has erred in coming to the conclusion that the market rate of the land, acquired at the time of acquisition was not Rs. 30 per sq. ft. Apart from the above facts and evidence, a Division Bench of this Court in First Appeal No. 560 of 2001 (old No. 658 of 1992) State of U.P. Vs. Sri Lekhi Ram Semalti, decided on 9th August, 2004, has held that the market value of the land acquired of ward No. 2 in the Old Tehri, was Rs. 30 per sq. ft. In that case also, the land was acquired for construction of Tehri dam and a notification under Section 4 of Land Acquisition Act, 1894, on 22.01.1983. Not only this, in First Appeal No. 202 of 2001 (old No. 572 of 1995) Tehri Hydro Development Corporation Vs. Krishna Nand Joshi and others, decided on 22nd July, 2005, by this Court, market value of the land of ward No. 7,8,9 and 10 of the same city, acquired in the year 1984, for the same purpose, has been assessed at Rs. 30 per sq. ft.

7. For the reasons as discussed above, this Court do not see any reason to interfere with the finding of the Reference Court. Accordingly, the appeal is liable to be dismissed. The same is dismissed.

However, the rate of interest awarded is reduced form 15% to 12% per annum from the date 12.09.1987. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 29th March, 2006
Sweta